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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,912	03/16/2001	Michael H. Myers	2807.2.22.4	6732
35430	7590	08/25/2005	EXAMINER	
GARY L. EASTMAN 707 BROADWAY STREET, SUITE 1800 SAN DIEGO, CA 92101			NGUYEN, DUNG X	
			ART UNIT	PAPER NUMBER
			2638	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/810,912	<b>Applicant(s)</b> MYERS ET AL.	
	<b>Examiner</b> Dung X Nguyen	<b>Art Unit</b> 2631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 18 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____  |

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1 - 18 are provisionally rejected** under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 18 of copending Application No. 09/810,902. Although the conflicting claims are not identical, they are not patentably distinct from each other because all claims of the instant application claimed invention are clearly encompassed by co-pending application # 09/810,902 as all limitations of the claims are included in the co-pending application. It would have been obvious to one of ordinary skill in the art to present the claims of this application as a broad version of co-pending application # 09/810,902.

Regarding claim 1, the statement on line 2 of "providing an error signal and a first shift signal;" is corresponded to the statement on lines 2 and 3 of "an error input line configured to

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carry an error signal; and a shift input line configured to carry a first shift signal;” of claim 1 of application S/N 09/810,902.

The statement on line 3 of “integrating the error signal to provide an integrated error signal” is corresponded to the statement on lines 5 and 6 of “an integration unit configured to receive and integrate the error signal and provide an integrated error signal” of claim 1 of application S/N 09/810,902.

The statement on line 4 of “an output line configured to carry a modulation waveform to a destination device” as recited in line 4 of the application S/N 09/810,902 is very obvious because a modulation waveform has to be sending to a destination device.

The statement on lines 4 and 5 of “summing the first shift signal with the integrated error signal to provide a total shift signal; and providing a synthesizer modulation waveform characterized by a frequency proportional to the total shift signal” is corresponded to the statement on lines 7 and 8 of “a summing unit configured to sum the first shift signal with the integrated error signal and provides a total signal” of claim 1 of the application S/N 09/810,902.

The statement on lines 6 and 7 of “providing a synthesized modulation waveform characterized by a frequency proportion to the total shift signal” is corresponding to the statement on lines 9 and 10 of “a waveform generator configured to receive a total shift signal and provide a modulation characterized by a frequency proportional to the total shift signal” of claim 1 of application S/N 09/810,902 since claim 1 of the application 09/810,912 claims for an apparatus to synthesize modulation waveforms and “sending the synthesized modulation waveform to a destination device” as recited in line 8 is very obvious and well known in the art.

Regarding to claims 2 – 11, claims are same as claims 2 – 11 of application S/N 09/810,902.

Regarding claim 12, the statement on line 3 of “providing a binary signal representing ON and OFF positions” is corresponded to the statement on lines 3 and 4 of “a data input line configured to carry a binary ON and OFF positions” of claim 12 of application S/N 09/810,902.

The statement on lines 4 – 6 of “the destination device having a dark point; and providing a synthesized modulation waveform corresponding to the dark point of the destination device if the binary data is in the OFF position” is corresponded to the statement on lines 5 – 9 of “the destination device having a dark point; and the wave form generator further configured to receive a binary data signal and provide the modulation waveform corresponding to the dark point of the destination device when the binary data signal is on the OFF position” of claim 12 of application S/N 09/810,902.

Regarding claim 13, the statement on line 2 of “providing a second shift signal” is corresponded to the statement on lines 3 and 4 of “the shift input line is further configured to carry a second shift signal” of claim 13 of application S/N 09/810,902.

The statement on line 3 of “providing a binary data representing first and second positions” is corresponded to the statement on lines 4 and 5 of “a data input line configured to carry a binary data signal representing first and second positions” of claim 13 of application S/N 09/810,902.

The statement on lines 4 – 6 of “selecting the first signal if the binary data signal corresponds to the first position and the second shift signal if the binary data signal correspond to the first position provided a data keyed shift signal” is corresponded the statement on lines 6 – 9 of “a multiplexor configured to carry a binary data signal and multiplex between the first and second shift signals to provide a data shift signal wherein the first shift signal corresponds to the first position and the second shift signal corresponds to the first position” of claim 13 of application S/N 09/810,902 because the multiplexor is the device for selecting.

The statement on lines 7 and 8 of “summing the data keyed shift signal and integrated error signal to provide the total shift signal” is corresponded to the statement on lines 11 and 12 of “the summing unit is configured to sum the data keyed shift signal and the integrated error signal to provide the total shift signal” of claim 13 of application S/N 09/810,902.

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Regarding to claims 14 – 18, claims are same as claims 14 – 18 of application S/N 09/810,902.

***Contact Information***

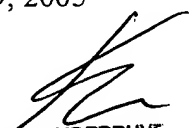
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (571) 272-3010. The examiner can normally be reached on Monday through Friday from 8:30 AM to 17:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Vanderpuye Kenneth N. can be reached on (571) 272-3078. The fax phone numbers for this group is (571) 273-3021.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

DXN

July 19, 2005

  
**KENNETH VANDERPUYE**  
**PRIMARY EXAMINER**